IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 31372 of 2006(T)

AGAINST THE ORDER IN CMA 19/2005 IN CMA.16/2005 of PRINCIPAL SUB COURT,NORTH PARAVUR OS.120/2005 of MUNSIFF COURT, PERUMBAVOOR (IA 837/2005)

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PETITIONERS:

1. M/S.DHARMA PARIPALANA SABHA,
   EDAVOOR KARA, KOOVAPPADY VILLAGE, REP. BY ITS
   PRESIDENT, SADANANDAN, S/O.KANNAN, KALAPPURA HOUSE
   EDAVOOR KARA, KOOVAPPADY VILLAGE, KOOVAPPADY,
   683 544.

2. M/S.DHARMA PARIPALANA SABHA,
   EDAVOOR KARA, KOOVAPPADY VILLAGE,
   REP. BY ITS PRESENT SECRETARY,
   M.G.SIVASANKARAN, S/O.GOPALAN, MULLASSERY,
   KOODALAPPAD, P.O.KOOVAPPADY-683 544.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.P.G.RAJAGOPALAN
SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENTS:

1. N.NATARAJAN,
   S/O.THE LATE SRI.K.S.NARAYANA IYER,
   THEKKE PUTHIYEDATH MADHOM,
   KOOVAPPADY KARA AND VILLAGE,
   P.O.KOOVAPPADY, PIN-683 544.

2. T.JAWAHAR,
   ADOPTED SON OF THE LATE SRI.RAMANATHAN,
   RESIDING AT RUGMANI MANDIRAM,
   G.K.PILLAI ROAD, PERUMBAVOOR,
   ERNAKULAM DISTRICT.

3. KASTHOORIRANGAN,
   S/O.LATE SRI.VISWANATHA IYER, THEKKE PUTHIYEDATH
   MADHOM, KOOVAPPADY KARA AND VILLAGE, REP. BY
   POWER OF ATTORNEY HOLDER SMT.MANGALAMMAL,
   W/O.VISWANATHAN, THEKKE PUTHIYEDATH MADHOM,
   KOOVAPPADY KARA & VILLAGE, P.O.KOOVAPPADY-683544.

BY ADV. SRI.N.K.KARNIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF PLAINT O.S.120/05 FILED BY R1 IN MUNSIFF COURT, PERUMBAVOOR.

EXT.P2: TRUE COPY OF AFFIDAVIT AND PETITION IN I.A.837/05 IN O.S.120/05 MUNSIFF COURT, PERUMBAVOOR.

EXT.P3: TRUE COPY OF WRITTEN STATEMENT FILED BY D1 IN O.S.120/05, MUNSIFF COURT, PERUMBAVOOR.

EXT.P4: TRUE COPY OF WRITTEN STATEMENT FILED BY D2 IN O.S.120/05 MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P5: TRUE COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS 3 & 4 IN O.S.120/05 MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P6: TRUE COPY OF COUNTER AFFIDAVIT FILED BY R1 D1 IN I.A.837/05 IN O.S.120/05, MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P7: TRUE COPY OF COUNTER AFFIDAVIT FILED BY R2-D2 IN I.A.837/05 IN O.S.120/05 MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P8: TRUE COPY OF COUNTER AFFIDAVIT FILED BY RESPONDENTS 3 AND 4 THE PETITIONERSABHA IN IA 837/05 IN O.S.120/05 MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P9: TRUE COPY OF SALE DEED 2027/05 DTD.19.3.05, EXECUTED IN FAVOUR OF PETITIONER SABHA.

EXT.P10: TRUE COPY OF SALE DEED 2020/05 DTD,19.3.05, EXECUTED IN FAVOUR OF PETITIONER SABHA.

EXT.P11: TRUE COPY OF ORDER DATED 15.7.05 IN I.A.837/05 IN O.S.120/05 ON THE FILE OF COURT OF MUNSIFF, PERUMBAVOOR.

EXT.P12: TRUE COPY OF COMMON JUDGMENT DATED 29.9.06 IN C.M.A.16/05 AND 19/05 ON THE FILE OF SUB COURT, NORTH PARAVUR.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.31372 OF 2006

DATED THIS THE 12th DAY OF DECEMBER, 2006

JUDGMENT

Petitioners are defendants 3 and 4 in O.S.120/05 on the file of Munsiff Court, Perumbavoor. First respondent is the plaintiff and other respondents, other defendants in the suit. The suit was filed seeking a decree for declaration that the plaint schedule school is an Educational Institution conceived and brought for the educational facilities principally for the Tamil Bhramins Community of Koovappady locality and for a permanent prohibitory injunction restraining respondents 1 and 2 from alienating the school or the property. I.A.837/05 was filed under Order XXXIX Rule 1 of Code of Civil Procedure seeking an order of temporary injunction restraining respondents 2 and 3 from alienating the property. Under Ext.P11 order, an order of temporary injunction was granted in favour of first respondent. It was challenged before Sub Court in C.M.A.16/05 by petitioners and C.M.A.19/05 by second defendant. As per Ext.P12 order, learned Sub Judge confirmed Ext.P11 order and dismissed the appeal. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Arguments of learned senior Counsel Adv. Sri. Kelu Nambiar appearing for petitioners and Adv. Mr. V. Giri learned counsel

appearing for respondents were heard.

3. Arguments of learned senior counsel was that as per the assignment deed dated, 19.3.05, respondents 2 and 3 alienated their entire bundle of rights in favour of petitioners and the suit was filed only on 23.3.05 and Ext.P11 order of temporary injunction was passed only on 15.7.05 and the Court below should not have granted the order of injunction restraining the alienation, which was alienated as early as 19.3.05 and therefore for that sole reason the injunction application should have been dismissed and the orders passed by Munsiff and Sub Judge are to be set aside. Learned senior Counsel also argued that the interpretation of Section 6 of Kerala Education Act by the Courts below is erroneous and what is prohibited under Section 6 is only transfer of the property of the school and not the entire rights including the school and under the release deed, the entire bundle of rights of respondents 1 and 2, the proprietory, managerial and administrative rights over the school were transferred and therefore the bar provided under Section 6 does not come into play at all and Courts below should have dismissed the application for injunction and Exts.P11 and P12 orders are to be set aside. Reliance was placed on the decision of this Court in **1975 KLT S.N. 50 Case No.128** and **Vijayakumari Pillai Vs. State of Kerala (2001(1) KLT S.N. 25 Case No.28).**

3. Learned counsel appearing for respondents relying on

Sub Section 3 of Section 6 argued that any alienation in violation of Section 6 is null and void as provided under Sub Section 3 and evenif the respondents 1 and 2 have alienated the property before the institution of the suit, by virtue of Sub Section 3 of Section 6 that transaction is null and void and therefore the orders of the Courts below are perfectly legal and cannot be interfered on that ground. It was also argued that what was transferred by respondents 1 and 2 is not the entire bundle of rights over the school but only the fractional shares of defendants 1 and 2 over the school and thus the alienation would attract the bar provided under Section 6 and therefore the order is perfectly correct. Learned Counsel also argued that even if it is taken that another interpretation is possible on Section 6 even then exercising the extraordinary jurisdiction of this Court under Article 227 of Constitution of India no interference is warranted when the view taken by the Courts is a possible view. Reliance was placed on the decision of this Court in **Purushothama Panikker Vs. Mohan (1999 (2) KLT 820)** and **Maroli Balan Vs. Maroli Dannu & Others(1986 KLT 919).**

4. Learned Munsiff granted an order of temporary injunction under Ext.P11 order finding that first respondent has a prima facie case and balance of convenience is in his favour and irreparable injury will be caused, if the order is not granted. Learned

Sub Judge also confirmed that finding. The question is whether in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India, it is to be interfered with.

5. The school admittedly belongs jointly to the plaintiff and defendants 1 and 2. What was transferred by defendants 1 and 2 in favour of petitioners is their fractional right over the school. True, defendants 1 and 2 have transferred whatever right they have, including the proprietory, managerial and administrative right over the school, in favour of petitioners. But the question is whether sanction as provided under Sub Section 1 of Section 6 of Kerala Education Act is warranted and if not whether Sub Section 3 would apply. Learned Munsiff and learned Sub Judge found that bar provided under Section 6 would apply. The arguments of learned senior counsel is that bar will not apply as what was transferred by defendants 1 and 2 is not the property of the school, but the entire bundle of rights inclusive of the proprietory, managerial and administrative right of the school.

6. Section 6 of Kerala Education Act reads:

> "**Restriction on alienation of property of aided school**:(1) Notwithstanding anything to the contrary contained in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of an aided school shall be created or made except with the previous permission in writing of such officer not below the rank of a District Educational Officer, as may be authorised by the Government in this behalf. The Officer shall grant such permission applied for

> unless the grant of such permission will, in his opinion adversely affect the working of the school.
>
> (2) Any person aggrieved by an order of the officer refusing or granting permission under Sub-section (1) may in such manner and within such time as may be prescribed, appeal to the Government.
>
> (3) Any transaction made in contravention of sub-section (1) or sub-section (2) shall be null and void.
>
> (4) If any educational agency or the manager of any school acts in contravention of sub-section (1) or of an order passed under sub-section (2) Government may withhold any grant to the school."

7. Section 6 prohibits any sale or transfer of possession in respect of any property of an aided school except with the previous permission in writing of an officer not below the rank of a District Educational Officer. It also provides that no permission shall be granted, if grant of such permission adversely affect the working of the school. Sub Section 3 makes the position clear that any such transfer in contravention of the provisions of Sub Section 1 will be null and void. The provision is enacted to prevent any adverse affect on the working of the school, by any such sale, mortgage pledge or transfer of possession.

8. A learned Single Judge of this Court in **1975 KLT S.N. 50 Case No.128** analysing Section 6 held:

> "When a running school as such with all its properties and rights to management is transferred Section 6 of the Act will not be attracted. What is sought to be prevented by Section 6 is the alienation of any property of an aided school by an educational agency because in that case, the working of the

> school will be adversely affected when any property or properties of the school go into the hands of third persons. When school is transferred as a going concern such a difficulty will not arise and hence the prohibition in Section 6 cannot apply to such transfer."

9. This observation was concurred by a Division Bench of this Court in **Maroli Balan Vs. Maroli Dannu & Others(1986 KLT 919)**. That was a suit for partition where fifty cents of land, where school is situate was the subject matter of suit for partition. The question considered by the Division Bench was whether the order of the trial Court to auction the suit property comprising the school between the sharers and apportionment of the sale proceeds in proportion to the shares of the respective sharers, was in violation of Section 6 of Kerala Education Act. Following the decision in **1975 KLT S.N. 50 Case No.128**, their Lordships held that the order of Munsiff, that the suit for partition or auction between the sharers is is not barred under Section 6 of the Kerala Education Act is legal and proper. Evidently by the sale the entire property including the school would vest with one of the sharers and by such transfer no adverse affect would be caused to the working of the school.

10. That legal position was later followed by another learned Single Judge of this Court in **Vijayakumari Pillai Vs. State of Kerala (2001(1) KLT S.N. 25 Case No.28).** It was held that when a school is transferred as a going concern, such a difficulty will not arise and hence the prohibition provided under Section 6 will

not attract such transfers.

11. But the alienation made by defendants 1 and 2 in favour of petitioners cannot be treated as a transfer of the entire proprietory, managerial and administrative right of the school. By virtue of the transfer petitioners would only step into shoes of defendants 1 and 2, as what was transferred by them is their right over the school. Though it is inclusive of their proprietory, managerial and administrative right, it cannot be said that the entire school as such was transferred in favour of petitioners. Inspite of the transfer plaintiff continues to have his bundle of rights over the school, administrative, managerial and proprietoy rights. So long as that right is unaffected by the transfer in favour of the petitioners, the transfer if permitted, would adversely affect the working of the school. At least that possibility cannot be ruled out. If that be so, it cannot be said that the sale or transfer will not attract the bar provided under Section 6. In that case the transfer, without the permission obtained in writing as provided under Sub Section 1 can only be treated null and void. If that be so, it cannot be said that the view taken by the Courts below is not a reasonable view that could be taken on Section 6 of the Act. In any event that is the question to be decided in the suit. Prima-facie, it cannot be said that the finding of the Courts below is either without jurisdiction or patently erroneous warranting interference in

exercise of the extraordinary or supervisory jurisdiction of this Court under Article 227 of Constitution of India. In such circumstances, I do not find any reason to interfere with the orders passed by Munsiff or the Sub Judge.

Petition dismissed. Learned Munsiff is directed to dispose the suit expeditiously untrammeled by any observation in Exts.P11 or P12 orders or in this judgment.

M.SASIDHARAN NAMBIAR,JUDGE

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